

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

## Agenda Item #11

July 5, 2013

**TO:** Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)  
Ande Bennett, Coastal Program Analyst (415/352-3626 andeb@bcdc.ca.gov)

**SUBJECT:** Department of Fish and Wildlife Progress Report: Completion of Pond 9/10 Public Access Improvements at the Napa Plant Site Restoration Project/Permit No.2004.008  
(For Commission consideration on July 18, 2013)

### Staff Summary

At its February 7, 2013 meeting, the Commission requested that the California Department of Fish and Wildlife ("the Department") return to BCDC to provide a progress report regarding completion of the Pond 9/10 public access at the Napa Plant Site required in Amendment No. One of BCDC Permit No 2004.008. On July 5, the Department submitted its report (attached Exhibit A) for completing this portion of a 6.2-mile trail system that is required by Permit No. 2004.008, as amended in 2008. The Department's schedule indicates that the trail would be available to the public in the fall of 2015, instead of at the end of 2013 as currently required by the BCDC permit. Staff believes the schedule described in the Department's letter is reasonable to allow completion of the environmental review, obtain necessary permits, and work with its funding partners to construct the improvements needed for this one-mile-long trail around the south and eastern side of Pond 9/10. At the July 18, 2013 Commission meeting, the Department will fully describe the progress that it has made since last February, when the Commission requested the mid-year report of the Department.

### Background

In January 2008, the Commission amended the authorization for the Napa Sonoma Marshes Salt Pond Restoration Project by issuing Amendment No. One for the restoration of ponds and channels at the former Cargill Plant Site (BCDC Permit No. 2004.008 ("the Permit")). The Permit's public access requirements include the creation of a 6.2-mile-long trail system along pond levees in the South, Central, and North Units of the Plant Site. Special Condition II.C.4 required the public access to be completed by January 1, 2013. As the restoration project neared completion in late 2012, while most of the public access improvements had been constructed, staff learned that the public access improvements for the North Unit, specifically the trail along the southern and eastern levees of Ponds 9/10, near the Napa Airport, had not been constructed. The environmental impacts of constructing this segment of the public access trail were not evaluated in the original EIR for the project, and in subsequent discussions with the Department, the Department concluded that a supplemental (SEIR) was needed for this portion of the public access trail. This



Making San Francisco Bay Better

portion of the public access was not proposed in the Department's original application or evaluated by the 2006 EIR, because the Department believed that public access trail crossings of the Sonoma-Marin Area Rail Transit (SMART) and the runway safety area ("RSA") near the Napa County Airport, would be safety hazards. The Department recently stated that another reason it did not propose a trail at Pond 9/10 was "due to potential biological impacts of construction and public access in a future Ecological Reserve."

In December 2012, staff informed the Department that, in order to avoid potential enforcement action for not completing this trail segment, a one-year time-extension could be granted for completing the SEIR and constructing the Pond 9/10 trail. The Department obtained the extension, with a new completion date of December 31, 2013. In February, the Commission learned that the trail improvements had not been completed and requested regular updates by the Department. In March 2013, the Department initiated a meeting with BCDC staff, the funders of the SEIR and the public access improvements (State Coastal Conservancy, Bay Trail Project, and Napa County Regional Park and Open Space District) and other interested parties, to outline the process for expediting the SEIR and related technical, legal, and permitting issues.

The two most challenging issues for completing this trail segment are: (1) the need to realign 1,200 feet of the trail near the Napa Airport to provide an adequate runway safety area (RSA); and (2) constructing a pedestrian crossing of the SMART railroad tracks. The RSA is a 6.8-acre fill area on the east side of Pond 10 that the Commission authorized in order satisfy Federal Aviation Administration guidelines ("FAA"). The RSA fill is intended (it is not yet complete due to a lack of funding) to extend approximately 800 hundred feet into Pond 10. A year after Amendment No. One was issued, in 2009, the Department and the funders discovered that a trail alignment using the pond levee between the airport runway and the RSA would not meet FAA standards. On April 23, 2013, at the Department's second meeting with the funders, BCDC staff, and the interested parties, an agreement was reached about a feasible construction method, which would involve constructing an earthen berm along the outboard edge of the RSA that is wide enough for the 10-foot-wide trail and high enough for the trail to be above the daily tides. This placement of additional fill would likely require additional authorization, i.e. another amendment to BCDC Permit No. 2004.008. Since April, the Department's consultant, Ducks Unlimited, has completed the geo-technical investigation and engineering drawings for this 1,200-foot section of the trail. Drawings and engineering for the other significant infrastructure needed to create a safe crossing at the SMART track has already been prepared by the Napa County Open Space District's consultant, Questa. Review and approval of these plans by SMART and the California Public Utilities Commission ("PUC") cannot commence until the Department's SEIR is completed, scheduled for December 31, 2013.

In the coming months, the Department will apply for amendments of the Army Corps of Engineers (ACOE) permit, the USFWS Biological Opinion, and BCDC permit amendment. Expediting these authorizations, as well as obtaining the SMART and PUC approvals, are the next critical steps to obtaining all of the approvals necessary to commence construction of an earthen berm in the summer of 2014, and complete the levee, the new rail crossing, and the resurfacing of the one-mile trail during the summer of 2015. Staff believes granting a time extension for this schedule is appropriate.

BCDC Permit No. 2004.008 was most recently amended (Amendment No. Three) on February 7, 2013. That permit amendment includes both language and an exhibit showing a trail alignment in the RSA that the Department now knows cannot be built. The Department also has not allocated additional funds to construct a trail around the RSA. The Department has begun discussions with the funding partners listed above to determine if sufficient funds are available to build the railroad crossing, the realigned trail around the RSA, and the surfacing for the one mile trail segment around the south and east sides of Pond 9/10. For these reasons, the Department has not yet signed their most recent amendment. The staff and Department continue to discuss language that may meet the Department's concerns.



## Memorandum

Date: July 5, 2013

To: R. Zachary Wasserman, Chair  
Larry Goldzband, Executive Director  
Bay Conservation and Development Commission  
50 California Street, Suite 2600  
San Francisco, CA 94111

From:   
Scott Wilson, Acting Regional Manager  
California Department of Fish and Wildlife – Bay Delta Region, 7329 Silverado Trail, Napa, California 94558

Subject: Status Update on the Pond 9/10 Trail in the Napa-Sonoma Marshes Wildlife Area,  
Napa County

The California Department of Fish and Wildlife (CDFW) met on March 6, with all of the agencies associated with the trail project, to discuss and clarify issues related to the Pond 9/10 trail. The primary issues included the Sonoma-Marin Area Rail Transit (SMART) railroad crossing, the potential revised alignments of the final trail segment, potential cultural resource impacts, biological impacts, airport safety and liability, California Environmental Quality Act (CEQA) compliance and funding. The meeting generated action items for discussion at a follow-up meeting. Napa County indicated they would check with their consultant working on the railroad crossing to determine the status. CDFW would contact the Federal Aviation Administration (FAA) to discuss the Runway Safety Area (RSA) requirements and what may be allowable when putting the public within the FAA jurisdiction. CDFW would contact the United States Fish and Wildlife Service (USFWS) and NOAA Fisheries to discuss endangered species impacts and permit needs. CDFW would work with Ducks Unlimited (DU) to draft a request for proposal (RFP) for development of a Supplemental Environmental Impact Report (EIR) to address the impacts of the trail project. The Napa County Airport would send a previously prepared cultural report on the potential borrow area to CDFW and they would research the County grading permit requirements. Major remaining issues are funding for CEQA compliance and permitting and construction of the project.

On April 23, CDFW conducted a follow-up meeting with most of the attendees of the March 6 meeting to discuss the action items and the CEQA cost estimates. Napa County reported they are waiting for CEQA to be complete by CDFW before they can build the public crossing. Napa County indicated that SMART will likely approve the public crossing request. CDFW discussed the permit requirements with the regulatory agencies. Most of the regulatory agencies want to see a final design before they will commit to deciding whether additional mitigation or permit amendments are needed. The Napa County Airport sent the cultural report of the borrow area to CDFW to be used in the Supplemental EIR. The bids generated from the RFP for development of the Supplemental EIR were submitted to DU. The bids were very wide ranging and they had not been evaluated for content and qualifications at that time. Based on the wide range of cost to complete the Supplemental EIR, it was unclear if the Association of Bay Area Governments (ABAG) grant to DU would cover the cost.

In late April, CDFW, ABAG, and DU evaluated and scored the proposals submitted from the RFP. The consultant that was chosen was the lowest bidder and the cost was low enough that the Supplemental EIR could be completed with existing grant funds.

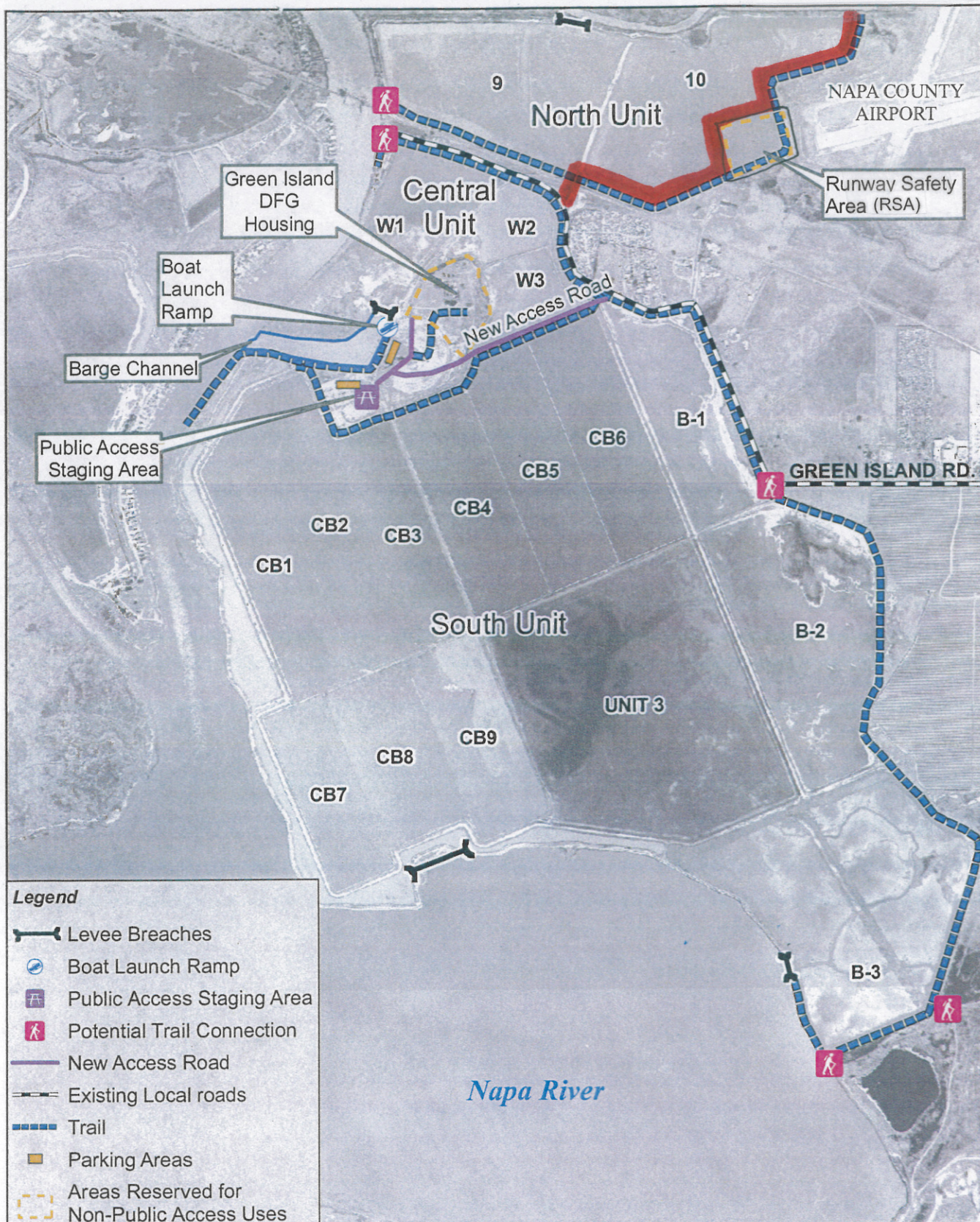
On June 18, CDFW and DU met with the consulting firm to discuss the major issues to be addressed in the Supplemental EIR. The consultant is now working on gathering the appropriate data to draft the Supplemental EIR. They have also begun conducting surveys to assess the impacts to biological resources and evaluating other sections of the EIR such as air quality and traffic.

Based on the schedule that has been developed by the consultant, DU and CDFW, the Supplemental EIR should be completed by December 31, 2013. Once the draft project description and environmental analysis is prepared this summer and prior to sending the Supplemental EIR to the State Clearinghouse for public review and comment, CDFW will request a meeting with all of the permitting agencies to discuss project description, proposed amount of wetland fill, impacts, proposed mitigation and timelines related to permit authorizations. CDFW will seek project authorization from the USFWS, NOAA Fisheries, Regional Water Quality Control Board, United States Army Corps of Engineers, SMART, and Bay Conservation and Development Commission to construct the project. Those authorizations will be sought following completion of the Supplemental EIR. Assuming all of the permits are in place and funding secured, the construction of the project is anticipated to begin in late summer 2014. The project will take two years to construct due to the time needed for settling and surcharge of material placed in the tidal areas at the edge of the RSA. The first year of construction will be borrowing the material and building up the trail area along the RSA so that the material has time to settle and compact. The following summer, stockpiled material will be placed and compacted to bring the surface elevation of the trail around the RSA to an elevation above the high tide line.

If you have any questions, please contact Mr. Larry Wyckoff, Senior Environmental Scientist, at [larry.wyckoff@wildlife.ca.gov](mailto:larry.wyckoff@wildlife.ca.gov) or (707) 944-5542; or Mr. Greg Martinelli, Wildlife Program Manager, at [greg.martinelli@wildlife.ca.gov](mailto:greg.martinelli@wildlife.ca.gov) or (707) 944-5570.

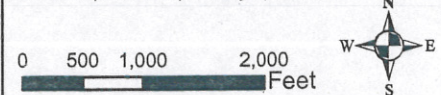
---





URS Corporation L:\Projects\Napa\_Plant\_Site\_26815044\Map\Current Working Documents\BCDC\DRB\Fig\_3\_public\_access\_features.mxd Date: 5/17/2007 9:32:54 AM Name: smlewis0

Source: Orthophotos of Napa County, April, 2004



Napa Plant Site  
Restoration Project  
26815044

Public Access Features  
(July 12, 2007)

**Public Access to Be Completed in 2015**

**EXHIBIT B**  
Permit No. 2004.008  
Amendment No. One  
January 2008